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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-818, C-552-819]

Certain Steel Nails from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is notifying the public that the Court of International Trade's (CIT) final judgment in this case is not in harmony with Commerce's final scope ruling. Commerce, therefore, is amending its final scope ruling and now finds that certain zinc and nylon anchors imported by Midwest Fastener Corp. (Midwest Fastener) are not within the scope of the antidumping and countervailing duty orders on certain steel nails from the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable June 13, 2019.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas at (202) 482-3813, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2016, Midwest Fastener, an importer of zinc and nylon anchors, filed a request with Commerce for a scope ruling that its zinc and nylon anchors should be excluded

from the scope of the antidumping and countervailing duty *Orders*¹ on certain steel nails from Vietnam.² Midwest Fastener described the zinc and nylon anchors as a unitary article of commerce consisting of two parts: (1) a zinc alloy or nylon body; and (2) a zinc plated steel pin.³

On May 17, 2017, Commerce issued its Final Scope Ruling, in which it determined that Midwest Fastener's zinc and nylon anchors are unambiguously within the scope of the *Orders* based upon the plain meaning of the *Orders* and the description of the zinc and nylon anchors contained in Midwest Fastener's scope ruling request and supplemental questionnaire responses.⁴ Commerce also found that several factors under 19 CFR 351.225(k)(1) – particularly the petition, the final determination of the International Trade Commission (ITC) issued in connection with the underlying investigation, and prior scope rulings – further supported Commerce's determination that Midwest Fastener's zinc and nylon anchors fall within the scope of the *Orders*.⁵ As a result of the Final Scope Ruling, Commerce instructed U.S. Customs and Border Protection (CBP) to continue suspension of liquidation of entries of Midwest Fastener's zinc and nylon anchors.⁶

Midwest Fastener challenged the Final Scope Ruling before the CIT, and on October 1, 2018, the CIT remanded Commerce's scope ruling.⁷ In its *Remand Order*, the CIT held that Midwest Fastener's zinc and nylon anchors, as unitary articles of commerce, are not a "nail"

¹ See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015); *Certain Steel Nails from the Socialist Republic of Vietnam: Countervailing Duty Order*, 80 FR 41006 (July 14, 2015) (collectively, the *Orders*).

² See Midwest Fastener's Letter, "Certain Steel Nails from the Socialist Republic of Vietnam: Midwest Fastener Scope Request," dated November 9, 2016.

³ *Id.* at 2, 3.

⁴ See Antidumping and Countervailing Duty Orders on Certain Steel Nails from the Socialist Republic of Vietnam: Final Scope Ruling on Midwest Fastener Corp.'s Zinc and Nylon Anchors (Final Scope Ruling), dated May 17, 2017 at 11-13.

⁵ *Id.* at 13.

⁶ See Message Number 7153303, dated June 2, 2017; Message Number 7153302, dated June 2, 2017.

⁷ See *Midwest Fastener Corp. v. United States*, Court No. 17-00131, Slip Op. 18-132 (CIT 2018) (*Remand Order*).

within the plain meaning of the word and are, therefore, outside the scope of the *Orders*.⁸ The CIT relied on dictionary definitions to determine the definition of “nail” and concluded that, because Midwest Fastener’s zinc and nylon anchors are a unitary article of commerce, the entire product, not just a component part, must fit the definition of a nail to fall within the scope of the *Orders*.⁹ The CIT held that the entire zinc or nylon anchor is not a nail “constructed of two or more pieces” pursuant to the *Orders*.¹⁰ Additionally, the CIT held that, because the relevant industry classifies anchors with a steel pin as anchors, not nails, trade usage further supports the conclusion that Midwest Fastener’s zinc and nylon anchors are not nails.¹¹ In support of its conclusion, the CIT cited its decision in *OMG, Inc. v. United States*, in which it found a product with a zinc anchor body and a steel pin outside the scope of the *Orders*.¹²

The CIT remanded the Final Scope Ruling to Commerce for further consideration consistent with the CIT’s opinion.¹³ The CIT also directed Commerce to issue appropriate instructions to CBP regarding the suspension of liquidation of Midwest Fastener’s zinc and nylon anchors.¹⁴

Pursuant to the CIT’s instructions, on remand, under protest, Commerce found that Midwest Fastener’s zinc and nylon anchors do not fall within the scope of the *Orders*.¹⁵ On June 3, 2019, the CIT sustained Commerce’s Final Remand Results.¹⁶

⁸ See *Remand Order*, Slip Op. 18-132 at 14.

⁹ *Id.* at 11.

¹⁰ *Id.*

¹¹ *Id.* at 12-13.

¹² *Id.* at 13, citing *OMG, Inc. v. United States*, Court No. 17-00036, Slip Op. 18-63 (CIT 2018) at 10-11.

¹³ See *Remand Order*, Slip Op. 18-132 at 14.

¹⁴ *Id.*

¹⁵ See Final Results of Redetermination Pursuant to Court Remand, *Midwest Fastener Corp. v. United States*, Court No. 17-00131, Slip Op. 18-132 (CIT October 1, 2018), dated December 21, 2018 (Final Remand Results).

¹⁶ See *Midwest Fastener Corp. v. United States*, Court No. 17-00131, Slip Op. 19-66 (CIT 2019).

Timken Notice

In its decision in *Timken*,¹⁷ as clarified by *Diamond Sawblades*,¹⁸ the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with Commerce’s determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s June 3, 2019 judgment in this case, sustaining Commerce’s decision in the Final Remand Results that Midwest Fastener’s zinc and nylon anchors fall outside the scope of the *Orders*, constitutes a final decision of that court that is not in harmony with the Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue the suspension of liquidation of Midwest Fastener’s zinc and nylon anchors pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Scope Ruling

Because there is now a final court decision with respect to this case, Commerce is amending its Final Scope Ruling and finds that the scope of the *Orders* does not cover the zinc and nylon anchors specified in Midwest Fastener’s Scope Ruling Request. Commerce will instruct CBP that the cash deposit rate will be zero percent for the zinc and nylon anchors subject to Midwest Fastener’s scope ruling request. In the event that the CIT’s ruling is not appealed, or if appealed, upheld by the CAFC, Commerce will instruct CBP to liquidate entries of Midwest Fastener’s zinc and nylon anchors without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

¹⁷ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹⁸ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Notification to Interested Parties

This notice is issued and published in accordance with section 516A(e)(1) of the Act.

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

Dated: June 10, 2019.

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